



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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Paper No. 11

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JAN 24 2003

In re Application of	:	
Kazunobu KUWAZAWA	:	DECISION ON PETITION
Application No.: 09/544,392	:	TO WITHDRAW THE
Filing Date: April 6, 2000	:	HOLDING OF ABANDONMENT
Attorney's Docket No.: 005317-20069	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed on September 20, 2002 and supplemented on January 22, 2003. There is no fee for this petition.

The petition is **GRANTED**.

A review of the application file reveals that a Notice of Abandonment was mailed on September 5, 2002 holding the application to be abandoned for failure to timely file a proper reply to the Office letter (a restriction) mailed on August 27, 2001.

Petitioner asserts that a response (an election and amendment) to the Office action of August 27, 2001 was timely filed via facsimile transmission on September 27, 2001. In support of this assertion, petitioner submitted the following papers as evidence of timely submission: 1) a copy of a response entitled "RESPONSE TO RESTRICTION REQUIREMENT AND PRELIMINARY AMENDMENT" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated September 27, 2001; 2) a statement signed by petitioner, filed via facsimile transmission on January 23, 2003, which attests upon a personal knowledge basis to the previous facsimile transmission; and 3) a copy of the sending unit's report confirming transmission. The Certificate of Transmission dated September 27, 2001 would have made the response timely if received in the Patent and Trademark Office.

The file record does not include the originally submitted response.

The evidence submitted by petitioner satisfies the conditions for accepting a response filed using a certificate of transmission under 37 C.F.R. § 1.8(a) but not received by the USPTO. Accordingly, the petition is granted.

The Notice of Abandonment mailed September 5, 2002 is VACATED.

The copy of the response submitted with the petition is accepted since the USPTO apparently did not receive the response originally submitted.

The application is being forwarded to the Technical Support Staff for entry of the response. The application will then be forwarded to the Examiner for consideration of the response.

Edward P. Westin

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